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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,095	12/11/2003	Timothy J. Flynn	CD-136	7989
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PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			EXAMINER SHAH, AMEE A	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 05/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/734,095	Applicant(s) FLYNN ET AL.	
	Examiner Amea A. Shah	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 24-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 24-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-9 and 24-36 are pending in this action.

Response to Amendment

Applicant's amendment, filed March 5, 2007, is entered. Claims 1-8, 24-31, 33 and 35 are amended. Claim 36 has been added.

In view of the amendments, the 35 U.S.C. §112 rejections are withdrawn. In view of the amended drawings, the objections to the drawings are withdrawn. The amendments to the Specification are accepted; however, there are still numerous trademarks throughout the application.

Specification

The use of trademarks *such as* WAL-MART, TARGET, etc. has been noted throughout the application. Trademarks should be capitalized wherever they appear and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

Claim 36 is objected to because of the following informalities: it contains a typographical/grammatical error in line 3 of the claim: "product comprising, the system" should likely be --product, the system comprising--. Appropriate correction is required.

Examiner Note

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. §103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. §103(c) and potential 35 U.S.C. §102(e), (f) or (g) prior art under 35 U.S.C. §103(a).

Claims 1-9 and 24-36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Morgan et al., US 2002/0087583 A1 (hereafter referred to as “Morgan”) in view of Ross, Jr. et al., US 6,993,572 B1 (hereafter referred to as “Ross”).

Referring to claims 1 and 4. Morgan teaches software and a system for operating a distributor organization of a product manufacturer to provide for sales of a manufacturer's product by dealers of the manufacturer's product (*see* Abstract and ¶0009), the software comprising:

a) website software applications for operating a domain server under control of the product manufacturer to provide a plurality of subdomain websites for dealers to offer sales of the manufacturer's product to consumers (Fig. 7 and ¶¶0033-0037 – note the manufacturer is the “distributor” and the dealer is the “store;” note also that a distributor is capable of being a manufacturer as the term manufacturer is interpreted broadly and encompasses any party that is capable of providing manufactured products and furthermore, the parties involved do not distinguish the structure of the apparatus from the prior art in terms of patentability);

b) business software applications for providing business functionalities, and a computer under control of the product supplier with these applications, including managing dealer transactions between the product manufacturer and the dealer (¶¶0037-0038 – note the dealer transactions include purchasing products from the distributor/manufacture), and managing

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consumer transactions between the dealer and the consumer (§§ 0034 and 0038 – note the consumer transactions include shopping).

Morgan does not explicitly disclose managing order fulfillment transactions directly between the consumer and product manufacturer and the website software applications (server) and the business software applications (computer) being interconnected whereby the product manufacturer may accept and fulfill sales orders from consumers placed through the sub websites directly to the consumers. Ross, in the same field of endeavor and/or pertaining to the same issue, teaches an apparatus for facilitating internet commerce with affiliated websites including a product supplier providing links to its ordering facility through distributor websites that look exactly like the product supplier for a seamless ordering process whereby the website software applications and the business software applications are interconnected so the product supplier may accept and fulfill sales orders, i.e. manage order fulfillment transactions, from consumers placed through the sub websites directly to the customers (*see* Abstract and col. 24, lines 30-65). Note that while the manufacturer is the “Merchant” and the dealer is the “Host,” the apparatus is capable of managing order fulfillment transactions directly between the consumer and product manufacturer through the domain server which can manage order fulfillment transactions on behalf of the subdomain website (i.e. dealer/Host) directly to the customers, including by having the manufacturer/Merchant accept and fulfill sales order from consumers placed through the sub website/Host. Note also that the providing of order fulfillment transactions directly between the consumer and the manufacturer is the manufacturer assembling and shipping the order directly to the consumer.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Morgan to include the teachings of Ross to allow for the website software applications and the business software applications to be interconnected so the product supplier may accept and fulfill sales orders, i.e. manage order fulfillment transactions, from consumers placed through the sub websites directly to consumers. Doing so would allow for a more seamless shopping experience between affiliates for increased marketing potential and incremental sales without the loss of visitor traffic, as suggested by Ross (col. 2, lines 54-65).

Referring to claims 2 and 8. Morgan in view of Ross teaches the software and system of claims 1 and 4 wherein the dealer transactions include enabling a dealer to request commission payments through a sub website (Ross, col. 26 line 61 through col. 27, line 2) in order to entice dealers to sell more products of the product suppliers by compensating them with commissions.

Referring to claims 3, 6 and 25. Morgan in view of Ross teaches the software and system of claims 1 and 4 wherein the website software and server enable a dealer to modify a subdomain website assigned to the dealer and enabling the dealer to make changes (Morgan, ¶¶0026-0033).

Referring to claims 5 and 24. Morgan in view of Ross teaches the system of claim 4 wherein the dealer transactions include receiving dealer identification information and maintaining a database of dealer identifier information (Morgan, ¶0035 – note the identification information is comprised in part of the store name, hours, etc. received from the pharmacist and the database is the distributor database).

Referring to claim 7. Morgan in view of Ross teaches the system of claim 4 wherein the dealer transactions include maintaining a listing of dealer sales made and commissions earned through the subdomain websites (Ross, col. 26, lines 41-67) in order to efficiently pay dealer commissions as an effort to entice dealers to sell more products of the product supplier.

Referring to claims 9 and 26. Morgan in view of Ross teaches the system of claim 4 wherein the order fulfillment transactions include accepting and receiving consumer orders for product supplier products placed through the subdomain website, receiving and verifying customer payment through the subdomain website, notifying a product supplier shipping department that the consumer order is to be shipped, and maintaining records of the orders (Ross, col. 26, lines 24-43) in order to more efficiently and seamlessly conduct the business of electronic shopping by processing customer orders, ensuring the products will be paid for, and efficiently communicating within the business, so that customer satisfaction is increased.

Referring to claim 27. Morgan in view of Ross teaches the system of Claim 4 wherein the order fulfillment transactions comprise receiving consumer instructions with respect to order fulfillment of a consumer order by the product supplier (Ross, col. 24, lines 59-65, col. 26, lines 39-45, and col. 27, lines 18-20 – note the instructions with respect to order fulfillment comprise the shipping information to where the order fulfillment would be completed) in order to more efficiently and seamlessly conduct the business of electronic shopping by ensuring the product supplier receives the information necessary to fulfill orders, thereby increasing customer satisfaction.

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Referring to claim 28. Morgan in view of Ross teaches the system of Claim 4 wherein one of the dealers establishes one of the plurality of subdomain websites for taking consumer orders of the product supplier product, fulfilling the consumer orders placed through the website by the product supplier, and tracking orders and commissions of the dealer (Morgan, e.g. ¶0034 – note that the established subdomain website and store are capable of taking, fulfilling and tracking orders and commissions).

Referring to claim 29. Morgan in view of Ross teaches the system of Claim 27 wherein the one of the dealers can modify a template of product supplier products offered on the one of the plurality of subdomain websites (Morgan, ¶¶0030 and 0032– note that the templates are the layout options and that the dealer can determine which products to offer).

Referring to claim 30. Morgan in view of Ross teaches the system of Claim 27 wherein the one of the dealers can modify the one of the plurality of subdomain websites to individualize promotional copy, add additional dealer product offerings, and select product supplier product markups (Morgan, ¶¶0030-0032).

Referring to claim 31. Morgan in view of Ross teaches the system of Claim 27 wherein the one of the dealers can view customer orders and commissions and submit commission payment requests to the product supplier at a secure area of the one of the plurality of subdomain websites (Ross, col. 26 line 55 through col. 27, line 2) in order to entice dealers to sell more products of the product suppliers by compensating them with commissions.

Referring to claim 32. Morgan in view of Ross teaches the system of Claim 4 wherein the order fulfillment transactions comprise shipping the products orders and notifying the host of the order status (Ross, col. 24, lines 62-65), but does not specifically disclose applying a tracking number to each of the sales orders and each of the consumers are notified of the tracking number. However, it is old and well known in the art at the time of the invention to apply tracking numbers to items shipped and disclosing such numbers to the customer so that the customer is aware of the status of their order, thereby increasing customer satisfaction.

Referring to claim 33. Morgan in view of Ross teaches the system of Claim 4 wherein the order fulfillment transactions comprise receiving consumer payment information, and verification of the consumer payment information is provided to the product supplier (Ross, col. 24, line 53-65 – note the verification of payment is included in the order that is sent to the supplier) in order for the product supplier to receive payment and effectively conduct business.

Referring to claim 34. Morgan in view of Ross teaches the system of Claim 4 wherein the order fulfillment transactions comprise listing a shipping status of each of the sales orders (Ross, col. 27, lines 24-35) so that customers can be kept updated of the progress of their orders, thereby increasing customer satisfaction.

Referring to claim 35. Morgan in view of Ross teaches the system of Claim 7 whereby the product supplier can set dollar amount limits or payment frequency limits, or both, on

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commission payment requests of the dealers (Ross, col. 26, line 60 through col. 27, line 2 – note that the product supplier can set the payment frequency limit of the established period).

Referring to claim 36. All of the limitations in apparatus claim 36 are closely parallel to the limitations of apparatus claims 2, 4 and 7, analyzed above and are rejected on the same bases.

Response to Arguments

Applicant's arguments filed March 5, 2007, have been fully considered, but are not persuasive.

In response to Applicant's argument that Ross teaches away from the manufacturer accepting and fulfilling orders by a web site under its control and from the merchant hosting its own website and taking order information through a web site it controls, (Remarks, pages 13-14), the Examiner disagrees. First, Ross does not criticize, discredit, or otherwise discourage the manufacturer accepting and fulfilling orders by a web site under its control. *See* MPEP §2141.02. Second, the limitation of a website being under the manufacturer's control is not recited in rejected claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *See In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Third, the patentability of a claims depends on the structure, and, possibly, the functions of that structure recited; the entities having control of the structures will not distinguish an apparatus from the prior art in terms of structure, *c.f. In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation

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with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (Bd. Pat. App. & Inter. 1987). Thus, the structural limitations of claims 1 and 4, including software operations for operating a domain server with a plurality of subdomain servers are taught by Morgan in view of Ross as discussed above, and as described, the limitations of the claim do not distinguish the claimed apparatus from the prior art.

In response to Applicant's argument that the reversal of roles in Ross would render Ross unfit for its purpose, and therefore teaches away from the manufacturer accepting and fulfilling orders by a website under its control (Remarks, page 14), the Examiner disagrees. As discussed above, the entities having control of a structure will not distinguish an apparatus from the prior art in terms of structure, *c.f. In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (Bd. Pat. App. & Inter. 1987). Thus, the structural limitations of claims 1 and 4, including software operations for operating a domain server with a plurality of subdomain servers are taught by Morgan in view of Ross as discussed above, and as described, the limitations of the claim do not distinguish the claimed apparatus from the prior art. Furthermore, Ross does not criticize, discredit, or otherwise discourage the roles being reversed, i.e. the product supplier having the domain server and the dealer, the subdomain. *See* MPEP §2141.02.

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In fact, Ross's apparatus is capable of doing so. *See also In re Gazda*, 219 F.2d 197, 198, 101 USPQ 400, 402 (CCPA 1955) (discussing reversing parts)

In response to applicant's argument regarding claim 36 that Morgan and Ross do not teach Applicant's product manufacturer paying a commission to the distributor (Remarks, page 15), Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. As discussed above with reference to claims 2 and 7, Ross teaches enabling a dealer to request commission payments through a sub website (Ross, col. 26 line 61 through col. 27, line 2), and maintaining a listing of dealer sales made and commissions earned through the subdomain websites (Ross, col. 26, lines 41-67).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ameer A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

May 15, 2007



YOGESH C. GARG
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600